

105TH CONGRESS  
1ST SESSION

# H. R. 2863

To amend the Migratory Bird Treaty Act to clarify restrictions under that Act on baiting, to facilitate acquisition of migratory bird habitat, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 6, 1997

Mr. YOUNG of Alaska (for himself, Mr. TANNER, Mr. DINGELL, Mr. WELDON of Pennsylvania, and Mr. STEARNS) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To amend the Migratory Bird Treaty Act to clarify restrictions under that Act on baiting, to facilitate acquisition of migratory bird habitat, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Migratory Bird Treaty  
5       Reform Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress makes the following findings:

8               (1) The Migratory Bird Treaty Act was enacted  
9       in 1918 to implement the 1916 Convention for the

1 Protection of Migratory Birds between the United  
2 States and Great Britain (for Canada). The Act was  
3 later amended to reflect similar agreements with  
4 Mexico, Japan, and the former Soviet Union.

5 (2) Pursuant to the Migratory Bird Treaty Act,  
6 the Secretary of the Interior is authorized to pro-  
7 mulgate regulations specifying when, how, and  
8 whether migratory birds may be hunted.

9 (3) Contained within these regulations are pro-  
10 hibitions on certain methods of hunting migratory  
11 game birds to better manage and conserve this re-  
12 source. These prohibitions, many of which were rec-  
13 ommended by sportsmen, have been in place for over  
14 60 years and have received broad acceptance among  
15 the hunting community with one principal exception  
16 relating to the application and interpretation of the  
17 prohibitions on the hunting of migratory game birds  
18 by the aid of baiting, or on or over any baited area.

19 (4) The prohibitions regarding the hunting of  
20 migratory game birds by the aid of bait, or on or  
21 over bait, have been fraught with interpretive dif-  
22 ficulties on the part of law enforcement, the hunting  
23 community, and courts of law. Hunters who desire  
24 to comply with applicable regulations have been sub-  
25 ject to citation for violations of the regulations due

1 to the lack of clarity, inconsistent interpretations,  
2 and enforcement. The baiting regulations have been  
3 the subject of multiple congressional hearings and a  
4 law enforcement advisory commission.

5 (5) Restrictions on the hunting of migratory  
6 game birds by the aid of baiting, or on or over any  
7 baited area, must be clarified in a manner that rec-  
8 ognizes the national and international importance of  
9 protecting the migratory bird resource while ensur-  
10 ing consistency and appropriate enforcement includ-  
11 ing the principles of “fair chase”.

12 **SEC. 3. CLARIFYING HUNTING PROHIBITIONS.**

13 Section 3 of the Migratory Bird Treaty Act (16  
14 U.S.C. 704) is amended—

15 (1) by inserting “(a)” after “SEC. 3.”; and

16 (2) by adding at the end the following:

17 “(b)(1) No person shall—

18 “(A) take any migratory game bird by the aid  
19 of baiting, or on or over any baited area, where the  
20 person knows or reasonably should have known that  
21 the area is a baited area; or

22 “(B) place or direct the placement of bait on or  
23 adjacent to an area for the purpose of causing, in-  
24 ducing, or allowing any person to take or attempt to

1 take any migratory game bird by the aid of baiting  
2 or on or over the baited area.

3 “(2) Nothing in this subsection prohibits any of the  
4 following:

5 “(A) The taking of any migratory game bird,  
6 including waterfowl, from a blind or other place of  
7 concealment camouflaged with natural vegetation.

8 “(B) The taking of any migratory game bird,  
9 including waterfowl, on or over—

10 “(i) standing crops, flooded standing crops  
11 (including aquatics), flooded harvested crop-  
12 lands, grain crops properly shocked on the field  
13 where grown; or

14 “(ii) grains, agricultural seeds, or other  
15 feed scattered solely as a result of—

16 “(I) accepted soil stabilization prac-  
17 tices or accepted agricultural planting, har-  
18 vesting, or manipulation after harvest; or

19 “(II) entering or exiting of areas by  
20 hunters or normal hunting activities such  
21 as decoy placement or bird retrieval, if rea-  
22 sonable care is used to minimize the scat-  
23 tering of grains, agricultural seeds, or  
24 other feed.

1           “(C) The taking of any migratory game bird,  
2           except waterfowl, on or over any lands where salt,  
3           grain, or other feed has been distributed or scattered  
4           as a result of—

5                   “(i) accepted soil stabilization practices;

6                   “(ii) accepted agricultural operations or  
7                   procedures; or

8                   “(iii) the alteration for wildlife manage-  
9                   ment purposes of a crop or other feed on the  
10                  land where it was grown, other than distribu-  
11                  tion of grain or other feed after the grain or  
12                  other feed is harvested or removed from the site  
13                  where it was grown.

14           “(3) As used in this subsection:

15                   “(A)(i) Except as otherwise provided in this  
16                  Act, the term ‘baiting’ means the intentional or un-  
17                  intentional placement of salt, grain, or other feed ca-  
18                  pable of attracting migratory game birds, in such a  
19                  quantity and in such a manner as to serve as an at-  
20                  tractant to such birds to, on, or over an area where  
21                  hunters are attempting to take them, by—

22                           “(I) placing, exposing, depositing, distrib-  
23                           uting, or scattering salt, grain, or other feed  
24                           grown off-site;

1           “(II) redistributing grain or other feed  
2           after it is harvested or removed from the site  
3           where grown;

4           “(III) altering agricultural crops, other  
5           than by accepted agricultural planting, harvest-  
6           ing, or manipulation after harvest, altering mil-  
7           let planted for nonagricultural purposes (plant-  
8           ed millet), or altering other vegetation (as spec-  
9           ified in migratory bird hunting regulations is-  
10          sued by the Secretary of the Interior) planted  
11          for nonagricultural purposes; or

12          “(IV) gathering, collecting, or concentrat-  
13          ing natural vegetation, planted millet, or other  
14          vegetation (as specified in migratory bird hunt-  
15          ing regulations issued by the Secretary of the  
16          Interior) planted for nonagricultural purposes,  
17          following alteration or harvest.

18          “(ii) The term ‘baiting’ does not include—

19               “(I) redistribution, alteration, or con-  
20               centration of grain or other feed caused by  
21               flooding, whether natural or man induced; or

22               “(II) alteration of natural vegetation on  
23               the site where grown, other than alteration de-  
24               scribed in clause (i)(IV).

1           “(iii) With respect only to the taking of water-  
2 fowl, the term ‘baiting’—

3           “(I) does not include, with respect to the  
4 first special September waterfowl hunting sea-  
5 son locally in effect or any subsequent water-  
6 fowl hunting season, an alteration of planted  
7 millet or other vegetation (as specified in such  
8 regulations), other than an alteration described  
9 in clause (i)(IV), occurring before the 10-day  
10 period preceding the opening date (as published  
11 in the Federal Register) of that first special  
12 season; and

13           “(II) does not include, with respect to the  
14 first regular waterfowl hunting season locally in  
15 effect or any subsequent waterfowl hunting sea-  
16 son, such an alteration occurring before the 10-  
17 day period preceding the opening date (as pub-  
18 lished in the Federal Register) of that first reg-  
19 ular season.

20           “(B) The term ‘baited area’ means any area  
21 that contains salt, grain, or other feed referred to in  
22 subparagraph (A)(i) that was placed in that area by  
23 baiting. Such an area shall remain a baited area for  
24 10 days following complete removal of such salt,  
25 grain, or other feed.

1           “(C) The term ‘accepted agricultural planting,  
2           harvesting, and manipulation after harvest’ means  
3           techniques of planting, harvesting, and manipulation  
4           after harvest that are—

5                   “(i) used by agricultural operators in the  
6                   area for agricultural purposes; and

7                   “(ii) approved by the State fish and wild-  
8                   life agency after consultation with the Coopera-  
9                   tive State Research, Education, and Extension  
10                  Service, the Natural Resources Conservation  
11                  Service, and the United States Fish and Wild-  
12                  life Service.

13           “(D) The term ‘accepted agricultural operations  
14           or procedures’ means techniques that are—

15                   “(i) used by agricultural operators in the  
16                   area for agricultural purposes; and

17                   “(ii) approved by the State fish and wild-  
18                   life agency after consultation with the State Co-  
19                   operative State Research, Education, and Ex-  
20                   tension Service, the State Office of the Natural  
21                   Resources Conservation Service, and the United  
22                   States Fish and Wildlife Service.

23           “(E) The term ‘accepted soil stabilization prac-  
24           tices’ means techniques that are—



1           “(i) used in the area solely for soil sta-  
2           bilization purposes, including erosion control;  
3           and

4           “(ii) approved by the State fish and wild-  
5           life agency after consultation with the State Co-  
6           operative State Research, Education, and Ex-  
7           tension Service, the State Office of the Natural  
8           Resources Conservation Service, and the United  
9           States Fish and Wildlife Service.

10          “(F) With respect only to planted millet or  
11          other vegetation (as designated in migratory bird  
12          hunting regulations issued by the Secretary of the  
13          Interior) planted for nonagricultural purposes, the  
14          term ‘planted’—

15               “(i) subject to clause (ii), means sown with  
16               seeds that have been harvested; and

17               “(ii) does not include alteration of mature  
18               stands of planted millet or of such other vegeta-  
19               tion planted for nonagricultural purposes.

20          “(G) The term ‘migratory game bird’ means  
21          any migratory bird included in the term ‘migratory  
22          game birds’ under part 20.11 of title 50, Code of  
23          Federal Regulations, as in effect October 3, 1997.”.

1 **SEC. 4. PENALTIES.**

2 Section 6(c) of the Migratory Bird Treaty Act (16  
3 U.S.C. 707(c)) is amended as follows:

4 (1) By striking “All guns,” and inserting “(1)  
5 Except as provided in paragraph (2), all guns”.

6 (2) By adding the following at the end:

7 “(2) In lieu of seizing any personal property not cru-  
8 cial to the prosecution of the alleged offense, the Secretary  
9 of the Interior shall permit the owner or operator of the  
10 personal property to post bond or other collateral pending  
11 the disposition of any proceeding under this Act.”.

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